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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 CRISPIN GARCIA-ESPANA,

8 Petitioner,

9 v.

10 MICHAEL KLINE, UNITED
11 STATES MARSHAL, EASTERN
DISTRICT OF WASHINGTON,

12 Respondent.
13

NO. CV-07-67-RHW

**ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS**

14 Before the Court is Petitioner's Petition for Writ of Habeas Corpus Under 28
15 U.S.C. § 2241 (Ct. Rec. 1). The Court ordered Respondent to show cause why the
16 writ should not be granted (Ct. Rec. 3). Respondent filed a Return and Opposition
17 to Plaintiff's Habeas Petition (Ct. Rec. 5) and Petitioner filed an Answer (Ct. Rec.
18 6). Respondent then filed a Motion to Dismiss (Ct. Rec. 7), to which Defendant
19 did not respond. On March 12, 2007, the Government filed a Notice of
20 Defendant's Release from U.S. Marshal's Custody to the Custody of Immigration
21 and Customs Enforcement.

22 In his Answer, Petitioner stated that he is not attacking his criminal
23 conviction, rather, he is challenging his January 2000 removal order issued by the
24 Immigration and Naturalization Service. As a result, Respondent filed his Motion
25 to Dismiss arguing that he is not the proper party to defend the Immigration and
26 Naturalization Service's action in 2000. The Court agrees.

27 Additionally, with the enactment of REAL ID Act of 2005, the availability
28 of habeas corpus relief in the district courts for aliens seeking to challenge orders

1 of removal was eliminated. 8 U.S.C. § 1252(a)(5); *Kolkevich v. Attorney General*
2 *of the United States*, 501 F.3d 323, 325 (3rd Cir. 2007) . Also, the time limit for
3 filing for relief from the final order of removal has passed. *See Kolkevich*, 501
4 F.3d at 337 (holding that aliens who received final orders of removal prior to the
5 enactment of RIDA have 30 days after the enactment of RIDA with which to file a
6 challenge to the order).

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Respondent's Motion to Dismiss (Ct. Rec. 7) is **GRANTED**.

9 2. The above-captioned case is dismissed, without prejudice.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
11 Order and to provide copies to counsel.

12 **DATED** the 20th day of June, 2008.

13 *S/ Robert H. Whaley*

14 **ROBERT H. WHALEY**
15 Chief United States District Judge

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